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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

16 Cr. 477 KMK

6 TERRICK WASHINGTON,

7 Defendant.
-----x

8 March 8, 2017
9 2:45 p.m.
White Plains, N.Y.

10 Before:

11 HON. KENNETH M. KARAS,

12 District Judge

13 APPEARANCES

14 PREET BHARARA
United States Attorney for the
15 Southern District of New York
16 MARCIA COHEN
Assistant United States Attorney

17 FEDERAL DEFENDERS UNIT
18 Attorney for Defendant
JASON SER

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1 THE COURTROOM DEPUTY: United States v. Terrick
2 Washington. 16 Cr. 477. Counsel please note their
3 appearances.

4 MS COHEN: Marcia Cohen for the government.

5 MR. SER: Jason Ser, Federal Defenders, with
6 Mr. Washington.

7 THE COURT: Good afternoon to you both. Please be
8 seated. All right. So, Mr. Ser my understanding is that
9 Mr. Washington is going to enter a plea to Count 1 of the
10 information, is that right?

11 MR. SER: Correct, your Honor. That's the only count
12 in the information, I believe.

13 THE COURT: And this is pursuant to an agreement dated
14 December 7, 2016, is that right?

15 MR. SER: That is correct, your Honor.

16 THE COURT: All right. Mr. Washington, good
17 afternoon. Mr. Ser, your attorney, advised us that you are
18 going to enter a plea of guilty to the one-count information,
19 is that correct?

20 THE DEFENDANT: Correct.

21 THE COURT: Before I accept your plea I'm going to be
22 asking you a series of questions. You should know that there
23 are two reasons for these questions. One is to make sure that
24 you're pleading guilty because you are guilty and that you're
25 not pleading for some other improper reason. And the other is

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1 to make sure that you understand fully the consequences of
2 being convicted of this charge by way of a plea. Obviously
3 this is a very important decision for you to make and it's a
4 decision you would not want to make or otherwise follow through
5 on unless you were 100 percent comfortable. Accordingly, if at
6 any point during this proceeding you become uncomfortable
7 because of a question you're asked or because of something that
8 someone says or you just become uncomfortable and you want to
9 speak to Mr. Ser, just let me know that and you'll get as much
10 time as you need to talk to him. Okay?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Are you able to understand
13 what I am saying?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you able to understand, speak, read
16 and write English?

17 THE DEFENDANT: Yes.

18 THE COURT: I'm going to ask that you continue to
19 stand while you take the oath.

20 (Defendant placed under oath)

21 BY THE COURT:

22 Q. Now that you have taken the oath you should understand that
23 all answers you give to the questions you are asked are subject
24 to the penalties of perjury. Perjury is intentionally lying
25 under oath about an important or material matter and if you

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were to do that here today you could be prosecuted for the crime of perjury which is separate and apart from the charge in the information. Do you understand that?

A. Yes.

Q. I'm sure Mr. Ser has gone over this with you but I just want to give you a sense of how we're going to proceed here this afternoon. We're going to start off by talking about you. You're going to be asked some questions about yourself. Please understand these are questions that are not meant to unnecessarily pry into your personal life but these are questions that are asked of everybody who says that he or she wants to plead guilty and these are questions asked to assist me in making a determination that you are ready, willing and able to go forward today. Thereafter, we're going to talk about the very important subject of your constitutional rights and we're going to focus on your trial rights, many of which you would be giving up if you decide to plead guilty. We're then going to talk about the charge in the information, what that charge is. Also what types of facts or elements, as they're called, that would have to be proven or established before you could be convicted of this charge. We're then going to talk about the consequences you face including any maximum and mandatory minimum sentences you face if convicted of this charge. We'll then talk about the plea agreement and what the plea agreement is and what it's not. And then we'll go over

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1 sentencing a little bit just so you understand how sentencing
2 works. And then I'll asked Ms Cohen to summarize the proof
3 that the government would offer if you elected to go to trial.
4 And then you will be asked as to how you wish to plead. You
5 can, of course, continue with your not guilty plea. But if you
6 say you want to plead guilty you're going to be asked to
7 describe what you did that makes you believe you are guilty.
8 Okay?

9 A. Yes.

10 Q. Again, if you want to talk to Mr. Ser at any point during
11 this proceeding for any reason whatsoever, just say so and
12 you'll get as much time as you need to talk to him. We are not
13 in a hurry. Okay?

14 A. Yes.

15 Q. Let's start with you, Mr. Washington. How old are you?

16 A. 45.

17 Q. How far have you gone in school?

18 A. 10th grade.

19 Q. Where was that?

20 A. In Newark.

21 Q. Have you ever been hospitalized or treated for narcotics
22 addiction?

23 A. No.

24 Q. Have you ever been addicted to narcotics?

25 A. No.

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1 Q. Are you now or have you recently been under the care of a
2 doctor or psychiatrist?

3 A. No.

4 Q. In the last 48 hours have you had any medicine, any pills,
5 any drugs or any alcoholic beverages?

6 A. No.

7 Q. How do you feel today?

8 A. Good.

9 Q. Do you feel like you understand fully what's going on here
10 today?

11 A. Yes.

12 THE COURT: Mr. Ser, do you have any reason to doubt
13 Mr. Washington's competence to enter a plea?

14 MR. SER: No, your Honor.

15 THE COURT: Ms Cohen?

16 MS COHEN: No.

17 THE COURT: I agree. I find that Mr. Washington is
18 fully competent to enter this plea this afternoon. That
19 finding is based on my observations of him during this
20 proceeding, as well as the answers he's given to the questions
21 he's been asked thus far, and the representations of counsel.

22 Q. Mr. Washington, have you had enough time to talk to Mr. Ser
23 about this case?

24 A. Yes.

25 Q. In particular, have you had enough time to talk to him

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1 about any possible defenses you might have to the charge
2 contained in the information?

3 A. Yes.

4 Q. To date, are you satisfied with Mr. Ser's representation of
5 you?

6 A. Yes.

7 THE COURT: Has there been a waiver of indictment?

8 MR. SER: Yes, your Honor.

9 Q. The next thing we're going to discuss, Mr. Washington, is
10 the subject of your constitutional rights. We're going to
11 focus on your trial rights. Before we go over your rights
12 together there is a document which Mr. Ser has just placed
13 before you. Could you take a look at that, please. Do you
14 recognize that document?

15 A. Yes.

16 Q. Did you go over it with Mr. Ser before we started here this
17 afternoon?

18 A. Yes.

19 Q. Did Mr. Ser answer any questions you had about the document
20 to your satisfaction?

21 A. Yes.

22 Q. Do you feel you understand fully what the document says?

23 A. Yes.

24 Q. If you could take a look at the second page of the
25 document. Is that your signature?

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1 A. Yes.

2 THE COURT: And Mr. Ser, is that your signature on the
3 third page?

4 MR. SER: Yes, your Honor.

5 THE COURT: Before you and Mr. Washington signed this
6 document you went over it carefully with him?

7 MR. SER: I did.

8 THE COURT: What we'll do at the end is mark that as
9 Court's Exhibit A.

10 Q. Mr. Washington, obviously the subject of your
11 constitutional rights and your waiver of them is very important
12 so we're going to go over your constitutional rights here
13 together now even though that's somewhat duplicative of what's
14 in that document. Okay?

15 A. Yes.

16 Q. Under the Constitution and laws of the United States, you
17 are entitled to a speedy and public trial before a judge or a
18 jury on all charges that are brought against you. Do you
19 understand that?

20 A. Yes.

21 Q. At a trial, you would be presumed innocent and before you
22 could be convicted it would be the government's burden of
23 proving your guilt by competent evidence and beyond a
24 reasonable doubt. Do you understand?

25 A. Yes.

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1 Q. If you were tried before a jury, before the jury could
2 return a guilty verdict, all of the jurors would have to agree
3 that the government met its burden of proving your guilt beyond
4 a reasonable doubt. And again, you would not have the burden
5 of proving your innocence. Understand?

6 A. Yes.

7 Q. During the trial and at all stages of this case, you have a
8 right under the Constitution to be represented by an attorney,
9 and if you could not afford an attorney, the Court would
10 appoint one to represent you. Do you understand?

11 A. Yes.

12 Q. During the trial, you would have the right with the
13 assistance of your attorney to confront and cross-examine the
14 government's witnesses against you. Do you understand that?

15 A. Yes.

16 Q. Moreover, your attorney could object to evidence he doesn't
17 think the government should be allowed to introduce, he could
18 offer evidence on your behalf, and he could force people to
19 testify on your behalf through the use of the Court's subpoena
20 power. Do you understand that?

21 A. Yes.

22 Q. If you were convicted at a trial, you would have the right
23 to appeal the guilty verdict. Do you understand that?

24 A. Yes.

25 Q. Also at this trial, if you wanted to, you would have the

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1 right to testify on your own behalf and you would also have the
2 right not to testify, and you would have the right not to have
3 that choice held against you in any way whatsoever. Do you
4 understand?

5 A. Yes.

6 Q. Even as you are entering this plea you have the right to
7 change your mind, continue with your not guilty plea and go to
8 trial on the charge that's been brought against you. Do you
9 understand that?

10 A. Yes.

11 Q. But if you plead guilty and if I accept your plea you're
12 going to give up your right to a trial and the other rights
13 that we have just discussed other than your right to an
14 attorney which you have regardless of whether or not you plead
15 guilty. Do you understand that?

16 A. Yes.

17 Q. And if you plead guilty and if I accept your plea, that
18 means there will be no trial and I will enter a judgment of
19 guilty and impose sentence after carefully considering what
20 Mr. Ser has to say about you or Ms Cohen has to say about the
21 sentence and what is also contained in what's known as the
22 presentence report. Do you understand that?

23 A. Yes.

24 Q. Finally, Mr. Washington, if you plead guilty, you will have
25 to give up your right not to incriminate yourself because as I

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1 said at the end of this proceeding if you say you want to plead
2 guilty, you will have to not only admit to guilt but also
3 describe what you did that makes you believe that you're
4 guilty; in other words, you will have to admit and acknowledge
5 your guilt. Do you understand that?

6 A. Yes.

7 Q. The next thing we're going to discuss is the charge
8 contained in the information. Before we do that, have you been
9 given a copy of the information or otherwise gone over a copy
10 of the information with Mr. Ser?

11 A. Yes.

12 Q. You understand the information contains one charge against
13 you?

14 A. Yes.

15 Q. And that charge is that between at least on or about
16 November 6, 2015 up to and including November 28, 2015 here in
17 the Southern District of New York and elsewhere, that, using
18 facilities and means of interstate and foreign commerce, you
19 unlawfully, willfully and knowingly attempted to persuade,
20 induce and entice an individual who had not attained the age of
21 18 to engage in a sexual activity for which a person could be
22 charged. In particular, it's alleged that in communications
23 over the Internet and phone that you attempted to persuade,
24 induce and entice an individual acting in an undercover
25 capacity and posing as a 13 year old girl to meet you at Orange

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1 County for the purpose of engaging in sexual activity. Do you
2 understand that's the charge that's been brought against you in
3 Count 1?

4 A. Yes.

5 Q. And you should know that that charge is brought pursuant to
6 Title 18 United States Code 2422(b). Do you understand that?

7 A. Yes.

8 THE COURT: Ms Cohen, if you could describe the
9 elements that would have to be proved or established before Mr.
10 Washington could be convicted of this charge.

11 MS COHEN: The elements are: First, that the
12 defendant used a facility of interstate commerce to attempt to
13 persuade or induce or entice or coerce the individual to engage
14 in sexual activity; that the defendant believed that such
15 individual was less than 18 years of age; that if the intended
16 sexual activity had occurred the defendant could have been
17 charged with a criminal offense; and that the defendant acted
18 knowingly and willfully.

19 Q. What Ms Cohen has done is list the elements or types of
20 facts that would have to be proven at a trial or otherwise
21 established before you could be convicted of this charge. Did
22 you follow what she said?

23 A. Yes.

24 Q. Now the next thing we're going to discuss is the subject of
25 consequences and we're going to start by talking about the

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1 punishment that you face. Before we do that what I want to
2 emphasize to you is that as of this very moment, I do not know
3 what your sentence in this case will be and the reason for that
4 is because there's been no cause to think about that because as
5 of this very moment you have been convicted of nothing. Do you
6 understand all that? You're shaking your head yes but you have
7 to give an answer verbally.

8 A. Yes, yes.

9 Q. What are we talking about then? What we're going to go
10 over is the maximum punishment you face based on laws passed by
11 Congress and any mandatory minimum punishment you face also
12 based on laws passed by Congress. The reason for going over
13 this with you is not to hint or suggest or telegraph to you in
14 any way what your sentence will be but to make sure that you
15 are fully informed as to what it can be under the law before
16 you decide you want to plead guilty. Okay?

17 A. Yes.

18 Q. If convicted of the one count in the information, you face
19 a mandatory minimum sentence of ten years imprisonment. Do you
20 understand that?

21 A. Yes.

22 Q. The maximum is lifetime imprisonment. Do you understand
23 that?

24 A. Yes.

25 Q. You also face a mandatory minimum of five years supervised

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1 release and a maximum of lifetime supervised release. Do you
2 understand that?

3 A. Yes.

4 Q. Regarding the fine, you face the greatest of three numbers,
5 \$250,000, or twice the financial gain to you as a result of the
6 offense conduct, or twice the financial loss anybody else
7 suffered as a result of the offense conduct. Do you understand
8 that?

9 A. Yes.

10 Q. There's also a separate financial penalty called a special
11 assessment. It's like a fine. Here the amount is one hundred
12 dollars, no more, no less, I have no choice over that. Do you
13 understand that?

14 A. Yes.

15 Q. In addition to all this you could be required to make
16 restitution, that is, financially compensate anybody who lost
17 money or property as a result of the offense conduct. Do you
18 understand all that?

19 A. Yes.

20 Q. On supervised release, as I said, you face a minimum of
21 five years and a maximum of lifetime supervised release. I
22 want to make sure you understand what supervised release is and
23 that you understand a particularly important aspect of it. So
24 first, as the phrase implies, supervised release is a period of
25 time after you finish serving your sentence, the imprisonment

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portion of your sentence, where you would be supervised by the Probation Office. And the reason you are subject to the Probation Office's supervision is that while you are serving this portion of your sentence you have to live by what's called terms and conditions. They're basically rules. And these terms and conditions are shared with you at the time of sentencing. And again because I don't know what your sentence will be I don't know exactly what terms and conditions will be imposed in your case. But by law everybody who is serving a federal sentence has to live by the condition that he or she not break any other laws, that he or she not possess any type of guns or drugs, and there are other conditions imposed at the time of sentencing. Do you understand that?

A. Yes.

Q. The important piece of it you should know is that if you violate any of these so-called terms and conditions of supervised release, in other words if you break the rules, then you could go back to jail for up to --

THE COURT: Is it three years, Ms Cohen?

MS COHEN: I believe so, yes.

Q. You could go back to jail for up to three years if you violate any of these terms and conditions. Do you understand that?

A. Yes.

Q. And if you do get sentenced to jail for violating the terms

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1 and conditions of supervised release, you don't get credit for
2 the time you served in jail before you started supervised
3 release, and also you don't get credit for the time you were
4 out on supervised release and complying with all the terms and
5 conditions. Do you understand that?

6 A. Yes.

7 Q. Let me give you an example just so it's clear but stressing
8 again not to read into this example what your sentence will or
9 will not be because I don't know. Let's say you get sentenced
10 to some term of imprisonment and five years supervised release.
11 During the first four and a half years you are in perfect
12 compliance. But at the very end you break a state law. Then
13 in this example you could go to jail for up to three years,
14 that's the maximum for violating supervised release conditions.
15 Do you understand that?

16 A. Yes.

17 Q. You wouldn't get credit for the four and a half years you
18 were in perfect compliance. And you wouldn't get credit for
19 the time you were in jail.

20 A. I understand.

21 Q. If the violation is of a state law, the federal sentence
22 and the state sentence could be consecutive to one another. Do
23 you understand that?

24 A. Yes.

25 Q. Mr. Washington, are you a citizen of the United States?

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1 A. Yes.

2 Q. Are you a citizen of any other country?

3 A. No.

4 Q. There are a couple of other consequences that you should be
5 aware of if convicted of the one count in the information. The
6 first is you could become deprived of certain valuable civil
7 rights which might include the right to vote, the right to hold
8 public office, the right to serve on a jury, the right to
9 possess any kind of a firearm, the right to be considered for
10 certain types of employment or to be bonded or to serve in the
11 U.S. military, as well as the right to obtain and possess
12 certain government-issued licenses that might be necessary for
13 certain professions and occupations. Do you understand that?

14 A. Yes.

15 Q. Also you could be required if convicted of this offense to
16 meet the obligations of the Sex Offender Registration and
17 Notification Act which is a federal law that requires you to
18 register and keep the registration current in each jurisdiction
19 where you might live, where you might work, where you might
20 study, and these registration requirements include providing
21 your true name, your address including your residential address
22 as well as any other addresses of places where you might be
23 working or studying. Do you understand all that?

24 A. Yes.

25 Q. All right, the next thing we're going to talk about is

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1 sentencing. Some things you should know about sentencing. The
2 first thing you should know is that the determination as to
3 what your sentence will be in this case is solely my decision.
4 It is not Mr. Ser's decision, it's not Ms Cohen's decision,
5 it's not the decision of anybody in the United States
6 Attorney's Office. I will, of course, consider the arguments
7 of the lawyers, both made in writing and orally in court. But
8 I'm not required to follow what they say. Do you understand?

9 A. Yes.

10 Q. The second thing you should understand is that regardless
11 of what happens at sentencing, the sentence that you receive is
12 not a basis for you to take back or withdraw your guilty plea
13 once it is entered and received. Do you understand that?

14 A. Yes.

15 Q. If it so happens that I impose a sentence that was arguably
16 illegal, Mr. Ser and his colleagues could argue that to the
17 Court of Appeals, and if the Court of Appeals agreed that the
18 sentence was wrong, all that would happen is that you would be
19 resentenced. You would not get your plea back. Do you
20 understand?

21 A. Yes.

22 Q. Finally, just so you know how sentencing works, at
23 sentencing the Court's task is going to be to determine what
24 sentence is sufficient but no more than necessary to achieve
25 the goals of the sentencing laws as they apply to you and to

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1 this case. To do that I am required to take into consideration
2 a number of facts, they are factors, and they're all set out in
3 the statute passed by Congress. They include, for example,
4 your personal history, everything about your personal history.
5 They include the nature of the offense conduct and the
6 seriousness of it. They include the need to deter others and
7 yourself from committing this type of offense. And they
8 include, among other factors, something known as the Sentencing
9 Guidelines.

10 Now the guidelines are an attempt to calculate a range
11 of imprisonment that applies to your case. And because it's a
12 range there's a low end and a high end. And it's calculated in
13 months. And the guidelines calculations itself involves
14 consideration of a number of factors, nature of the offense
15 conduct, maybe any criminal history you might have. Do you
16 understand that?

17 A. Yes.

18 Q. The guidelines do not set the boundaries of your sentence.
19 Even though there's a low and a high end of the range, I don't
20 have to impose a sentence within that range. I can, if it
21 turns out that I think the sentence I think is appropriate
22 actually falls in that range, I can impose that sentence. If I
23 determine that the sentence I think is appropriate falls
24 outside that range, either above or below the range, then I can
25 impose the sentence. But I cannot go below the 120 month

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1 minimum, the ten-year minimum that applies to your case and I
2 can't go above the max of life. Do you understand how all that
3 works?

4 A. Yes.

5 MS COHEN: I'm sorry, I actually think that, going
6 back to the supervised release, I actually believe that it
7 would be, if his supervised release was revoked, the Court
8 could resentence to five years because it's a Class A felony.

9 Q. Earlier, Mr. Washington, I mentioned that if you violate
10 the terms and conditions of supervised release you could go
11 back to jail. Do you recall that?

12 A. Yes.

13 Q. What I told you was the maximum amount of imprisonment you
14 could get for violating the supervised release conditions would
15 be three years, do you remember that?

16 A. Yes.

17 Q. That was an error on my part. The maximum is five years,
18 not three. You have to erase that, what I said. Do you
19 understand that?

20 A. Yes.

21 Q. If you were to violate any of the terms and conditions of
22 supervised release the so-called rules you could go to jail for
23 up to five years. Do you understand that?

24 A. Yes.

25 THE COURT: Anything else on that subject?

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1 MS COHEN: No, thank you.

2 THE COURT: Mr. Ser, anything else on that subject?

3 MR. SER: No, your Honor.

4 Q. Has anybody threatened you or forced you in any way to
5 enter a guilty plea?

6 A. No.

7 Q. My understanding is that you're pleading guilty pursuant to
8 an agreement you have with the government dated December 7,
9 2016, is that right?

10 A. Yes.

11 THE COURT: Mr. Ser, I take it you have the original
12 there?

13 MR. SER: I do.

14 THE COURT: You'll note the initials that appear next
15 to the docket number, which is a \$50 fine for Ms Cohen.

16 MS COHEN: I'm so sorry.

17 THE COURT: It's been a while, Ms Cohen, since I've
18 been able to impose a \$50 fine on you.

19 MR. SER: The criminal number is off too.

20 THE COURT: They usually go together on that. If you
21 typed this document it would be on you.

22 MS COHEN: It's on me.

23 THE COURT: So it's a hundred bucks.

24 MR. SER: I've interlineated. It now shows 16 Cr. 477
25 with KMK in parentheses.

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1 Q. Mr. Washington, Mr. Ser has given you a document to look
2 at. Take a look at that, please.

3 A. Uh-huh.

4 Q. Does that document look familiar to you?

5 A. Yes.

6 Q. Is it in fact the plea agreement you have with the
7 government?

8 A. Yes.

9 Q. Did you go over this document very carefully with Mr. Ser?

10 A. Yes.

11 Q. Did he answer any questions you had about the document to
12 your satisfaction?

13 A. Yes.

14 Q. Do you feel you understand what the document says about
15 your obligations and the government's obligations?

16 A. Yes.

17 Q. If you could take a look at the last page, is that your
18 signature down at the bottom?

19 A. Yes.

20 THE COURT: Mr. Ser, is that your signature near your
21 client's?

22 MR. SER: Yes.

23 THE COURT: Before you and Mr. Washington signed this
24 document, you went over it carefully with him?

25 MR. SER: Yes.

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1 Q. Mr. Washington, you and Mr. Ser say that you've gone over
2 this document. I'm in no position to quarrel with that. There
3 are some things worth going over in person. The first thing
4 you should understand is that while this looks like a letter,
5 it says Dear Mr. Ser, it's got letterhead, this is an
6 agreement, a contract you have with the United States
7 Attorney's Office for this district. Do you understand that?

8 A. Yes.

9 Q. That's the whole point in having you and Mr. Ser sign it on
10 your behalf and having the government's attorney sign it on the
11 United States Attorney's Office's behalf. Do you understand
12 that?

13 A. Yes.

14 Q. Because you are the only ones who signed it, you are the
15 only ones bound by this contract. Do you understand that?

16 A. Yes.

17 Q. So, for example, I'm not bound by this contract because I
18 did not sign it. Do you understand that?

19 A. Yes.

20 Q. Now, starting at page 2 and spilling all the way down to
21 the bottom of page 3, there is a discussion there of the
22 guidelines, right? And at the bottom of page 3, see (c) says
23 sentencing range?

24 A. Yes.

25 Q. So according to you and the government, the guideline range

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1 that applies to your case, down there at the bottom, the
2 stipulated guidelines range is 262 to 327 months imprisonment.

3 Do you see that there?

4 A. Yes.

5 Q. A couple of things about that. Three things about that.

6 First of all, I'm not required to agree with you and the
7 government that that's the guideline range. Do you understand
8 that?

9 A. Yes.

10 Q. So I do my own calculation. Sometimes my calculation lines
11 up with everybody's, sometimes it doesn't. Second of all,
12 regardless of what the guideline range is, even if that is the
13 guideline range, remember that range is only one of a number of
14 the factors that have to be considered in imposing sentence, in
15 imposing what is a sentence that is sufficient but no more than
16 necessary. Meaning that that range, that 262 to 327, does not
17 define the boundaries of what an appropriate sentence might be
18 in your case. Do you understand that?

19 A. Yes.

20 Q. The third thing is as is noted there there's a mandatory
21 minimum of 120 months in prison. Do you see that?

22 A. Yes.

23 Q. That's the floor. I can't go below that 120 months. Even
24 if I can go below the 262, I cannot go below 120. Do you
25 understand that?

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1 A. Yes.

2 Q. Now, on page 5 at the very top there's a long paragraph
3 there that says it's agreed that you're not going to file a
4 direct appeal or bring a collateral challenge and there's a
5 bunch of statutory sites there that deal with the federal
6 *habeas corpus* petition statute, not file a direct appeal or
7 otherwise challenge or otherwise seek a sentencing
8 modification, you're not going to challenge your sentence in
9 any way as long as the sentence is within or below the
10 stipulated guideline range of 262 to 327 months imprisonment.

11 Do you see that?

12 A. Yes.

13 Q. What that means is, remember the floor is 120 months, it's
14 not zero, any sentence that, well frankly any sentence that is
15 between 0 and 327 months you will not challenge in any way
16 including by way of appeal or *habeas corpus* petition. Do you
17 understand that?

18 A. Yes.

19 Q. You have preserved your right to appeal any sentence above
20 327 months imprisonment. Do you understand that?

21 A. Yes.

22 Q. Even if I were to impose such a sentence and even if it
23 turns out that was wrong, all that would happen is that you
24 would be resentenced, you would not get your plea back. Do you
25 understand that?

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1 A. Yes.

2 Q. There are some other appeal waivers. You've agreed not to
3 appeal any sentence where the fine is less than or equal to
4 \$350,000. Do you see that there?

5 A. Yes.

6 THE COURT: It should be 250.

7 MR. SER: I was just saying that to Ms Cohen.

8 THE COURT: \$150 in fines in one sitting. Do you want
9 to change it there, Jason.

10 Q. Any fine that's equal to or less than \$250,000, not
11 350,000, you're not going to appeal or challenge in any way.
12 Do you understand that?

13 A. Yes.

14 Q. The next paragraph says that you are accepting the
15 agreement and pleading guilty because you are guilty. Do you
16 see that there?

17 A. Yes.

18 Q. By pleading guilty you're going to waive any right you have
19 to withdraw your plea or legally challenge -- it says attack
20 the conviction -- legally challenge any conviction that results
21 from the plea based on the claim that the government failed to
22 produce certain discovery material. And there's a reference to
23 a statute and to two Supreme Court cases. Do you see that
24 there?

25 A. Yes.

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1 Q. The *Jencks Act* is a statute Congress passed that requires
2 federal prosecutors to turn over to people charged with federal
3 crimes the prior written or recorded statements of the
4 government's witnesses that relate to what the witness
5 testifies about. Do you understand that?

6 A. Yes.

7 Q. The *Brady* case is where the Supreme Court said that we all
8 have the right under the due process clause to be provided by
9 the prosecutor who brings charges against us access to
10 exculpatory evidence or information that could lead to
11 exculpatory evidence which includes evidence or information
12 that could be used at sentence. Do you understand that?

13 A. Yes.

14 Q. The *Giglio* case, the other case that's cited there, is
15 where the Supreme Court held that all of us have a right to be
16 provided by the prosecutor with information that could be used
17 to challenge the credibility of the government's witnesses.
18 What that paragraph says is that if the government has failed
19 to produce those materials that it's required to under *Jencks*
20 or those two Supreme Court cases other than if it fails to
21 provide evidence that actually establishes your innocence that
22 would not be a basis for you to take back your plea or legally
23 challenge any conviction that results in a plea. Do you
24 understand?

25 A. Yes.

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1 THE COURT: Is there anything else about the terms and
2 conditions of the agreement that you want me to go over with
3 Mr. Washington?

4 MR. SER: No, your Honor.

5 THE COURT: Have you found any other typos?

6 MR. SER: No, your Honor.

7 THE COURT: Ms Cohen, is there anything about the
8 terms and conditions of the agreement that you want me to go
9 over with Mr. Washington?

10 MS COHEN: No.

11 Q. Mr. Washington, you're 100 percent comfortable you
12 understand the agreement?

13 A. Yes.

14 Q. Has anybody made you any promises that are not contained in
15 the agreement, any side promises, any oral promises?

16 A. No.

17 Q. In particular, has anybody promised you what your sentence
18 would be if you plead guilty?

19 A. No.

20 THE COURT: Ms Cohen, if you could summarize the proof
21 that the government would offer if Mr. Washington elected to go
22 to trial.

23 MS COHEN: If the case went to trial, the government
24 would establish that in or about November of 2015 an
25 individual, who I'll call the reporter, advised an investigator

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from the Orange County DA's Office that the reporter, posing as a 13 year old girl named Melinda, and using a decoy profile had engaged in online communications with a person who was using the screen name XTerrick. The reporter also advised that XTerrick had identified himself as at a 44 year old male, and had indicated that he wanted to meet with Melinda for the purpose of having sex. The investigator advised the reporter to continue the communications and set up a meeting with X Terrick. The evidence would show that from November 6 to November 27 the reporter engaged in communications with the defendant who was using the screen name XTerrick. The evidence would include the chat logs and the text messages as well as photographs of the defendant that was sent by XTerrick to the reporter. In the chat, Melinda said that she was 13 and the defendant told her that he was 44. The defendant provided his telephone number, gave his last name as Washington, the chats were sexually explicit and in them Washington described in graphic detail specific sexual activities he wanted to engage in with her. They made a plan to meet on November 28 in Monroe, New York, and Washington said he would take a train to Harriman, New York and then a bus to their meeting place. The evidence would establish that on November 28th when the defendant arrived at the Harriman Metro-North train station he was arrested. Finally, the evidence would include a videotape of the defendant's post-arrest interview. During that

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1 interview he admitted among other things that he met a young
2 girl on the Internet while using a chat application from his
3 cellphone and that he made arrangements to meet her so he could
4 have sex with her. And he also admitted that the girl told him
5 that she was 13 years old.

6 Q. Mr. Washington, did follow what Ms Cohen had to say about
7 the summary of the proof that the government would offer if you
8 went to trial?

9 A. Yes.

10 Q. How do you wish to plead, guilty or not guilty?

11 A. Guilty.

12 Q. If you could describe what you did that makes you believe
13 you're guilty.

14 A. I went from New Jersey to New York to meet the young lady.
15 I knew she was a minor.

16 Q. What was the purpose of the meeting from your perspective?

17 A. Sex.

18 Q. Did this happen between November 6 and November 28 of 2015?

19 A. Yes.

20 Q. Before you meeting did you attempt to persuade or induce or
21 entice her to meet with you in New York?

22 A. Yes.

23 THE COURT: Mr. Ser, I take it there's no contest to
24 the interstate commerce piece of this.

25 MR. SER: None, your Honor.

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1 Q. Mr. Washington, did you know what you were doing was
2 illegal?

3 A. Yes.

4 THE COURT: Mr. Ser, anything else?

5 MR. SER: No, your Honor.

6 THE COURT: Ms Cohen?

7 MS COHEN: If the defendant could just confirm that he
8 used his cellphone to make that plan with the girl.

9 Q. Did you use your cellphone to make the plan with the person
10 you thought was a 13 year old girl?

11 A. Yes.

12 THE COURT: Anything else, Ms Cohen?

13 MS COHEN: No.

14 Q. Are you pleading guilty to this charge because you are
15 guilty?

16 A. Yes.

17 THE COURT: Mr. Ser, do you believe that there's a
18 sufficient factual basis to accept the plea?

19 MR. SER: Yes, your Honor.

20 THE COURT: Ms Cohen?

21 MS COHEN: Yes.

22 THE COURT: I agree. I already found that
23 Mr. Washington is competent to enter a plea here today. I find
24 that he's knowingly and voluntarily entered this plea because
25 he's been advised of the charge, the elements of the charge,

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1 the punishment he faces, both mandatory minimum and maximum, if
2 convicted of the charge, he understands how sentencing works,
3 and we've gone over what the agreement says, and Mr. Washington
4 has in fact acknowledged that he's guilty as charged in the
5 one-count information. The Court will accept the plea and
6 enter a judgment of guilty.

7 Can we set sentence for July 5th at three o'clock?

8 MR. SER: I'm in Delaware that whole week.

9 THE COURT: For the Firecracker Tournament.

10 MR. SER: Battle of the Beach.

11 THE COURT: Battle of the Beach, that's even better.
12 For the record, that's baseball just in case anyone thinks Mr.
13 Ser is doing some muscle contest on the beach.

14 MR. SER: Could we do something in the middle of
15 August?

16 THE COURT: No. I'm away that week.

17 MR. SER: Sometime in August if that's amenable --

18 MS COHEN: If it's going to be August could it be the
19 very, very beginning.

20 THE COURT: August 1? That's the very, very
21 beginning, right?

22 MS COHEN: Sure.

23 MR. SER: That's fine.

24 THE COURT: At eleven a.m. Mr. Washington, I
25 mentioned a while back that one of the things that gets read

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1 before sentencing is the presentence report. The presentence
2 report is a document prepared by the Probation Department, the
3 purpose of which is to provide as much information as is
4 practical under the circumstances about you and about the
5 offense conduct. To prepare this report the Probation
6 Department will do it's own sort of inquiry. They'll go talk
7 to Ms Cohen and talk about her version of the offense conduct
8 and they'll talk to Mr. Ser about the same and they'll also
9 talk to you. And I'll note that Mr. Ser will be present when
10 they do talk to you.

11 THE DEFENDANT: He will be there with me?

12 THE COURT: Right. And he may advise you not to
13 answer certain questions, which you have right to do. But if
14 you do answer their questions, they're going to ask you about
15 your whole life, family history, employment history, health
16 history, you name it, because one of the factors that gets
17 considered is you and your personal history. So they're going
18 to gather all that information and they're going to prepare a
19 draft of the report which they'll give to Ms Cohen and Mr. Ser.
20 And he's going to want you to help him go over it. He'll visit
21 you and he'll give you a copy of it. He's going to want you to
22 proofread it. And make sure that you tell him if there's
23 anything in there that you know to be inaccurate so he can get
24 Probation to try to fix that in the report. Once they get all
25 that, they distribute a final report to everybody including

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1 myself. So you want to make sure that whenever Mr. Ser says
2 you can answer the question you answer truthfully because you
3 want the report to be accurate particularly as it relates to
4 you and you don't want them to report that you're dishonest.
5 That's not what you want. So that's the next step in this
6 process, just so you know.

7 Anything else, Mr. Ser?

8 MR. SER: No, your Honor.

9 THE COURT: Ms Cohen?

10 MS COHEN: No, your Honor.

11 THE COURT: All right. Then we are adjourned. Thank
12 you, marshals.

13 (Proceedings adjourned; 3:25 p.m.)

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